



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR- 2013-0408; FRL- 9900-57-Region3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) submittal from the State of Delaware pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Delaware has made a submittal addressing the infrastructure requirements for the 2008 8-hour ozone NAAQS. This action proposes to approve portions of this submittal.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2013-0408** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.

C. Mail: **EPA-R03-OAR-2013-0408**, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2013-0408**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On March 27, 2013, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 8-hour ozone NAAQS.

I. Background

On March 27, 2008 (73 FR 16436), EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. Pursuant to section 110(a)(1) of the CAA, states are

required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of State Submittal

On March 27, 2013, Delaware provided a submittal to satisfy section 110(a)(2) of the CAA

requirements, that is the subject of this proposed rulemaking, for the 2008 8-hour ozone NAAQS. This submittal addressed the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

EPA has analyzed the above identified submission and is proposing to make a determination that such submittal meets the requirements of section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, with the exception of the Part D, Title I nonattainment planning requirements of section 110(a)(2)(I), and the portion of the submittal relating to section 110(a)(2)(D)(i)(I) on which EPA will take separate actions. A detailed summary of EPA's review and rationale for approving Delaware's submittal may be found in the Technical Support Document (TSD) for this action which is available on line at www.regulations.gov, Docket number **EPA-R03-OAR-2013-0408**.

This proposed rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process. This proposed rulemaking action also does not address section 110(a)(2)(D)(i)(I) of the CAA. In accordance with the decision of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit Court), EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from Delaware as a required SIP submission. *See EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 2013 U.S. Lexis 4801 (2013). On June 24, 2013, the Supreme Court granted the petitions of the

United States and others and agreed to review this D.C. Circuit Court decision. However, at this time the D.C. Circuit Court decision remains in place and unless it is reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until EPA has quantified their obligations under that section. EPA will address the portion of Delaware's March 27, 2013 SIP submittal addressing section 110(a)(2)(D)(i)(I) in a separate action.

III. Proposed Action

EPA is proposing to approve Delaware's submittal that provides the basic program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), necessary to implement, maintain, and enforce the 2008 8-hour ozone NAAQS, with the exception of the Part D, Title I nonattainment planning requirements of section 110(a)(2)(I), and the portion of the submittal relating to section 110(a)(2)(D)(i)(I) on which EPA will take separate actions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action pertaining to Delaware's section 110(a)(2) infrastructure requirements for the 2008 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 20, 2013.

W. C. Early,
Acting Regional Administrator,
Region III.

[FR Doc. 2013-21270 Filed 08/29/2013 at 8:45 am; Publication Date: 08/30/2013]